

**ASSEMBLY BILL**

**No. 1704**

---

**Introduced by Assembly Member Richman**

February 22, 2005

---

An act to amend Sections 216, 331, 365, 366, 366.2, and 454.5 of, to add Sections 399.20 and 9609 to, to add Article 17 (commencing with Section 400) to Chapter 2.3 of Part 1 of Division 1 of, and to repeal Section 454.5 of, the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1704, as introduced, Richman. Electricity: electrical restructuring: core, noncore, and core-elect electrical market structure.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. The existing Public Utilities Act requires the commission pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. However, existing law also suspends the right of retail end-use customers, other than community choice aggregators, as defined, to acquire service from certain electricity suppliers after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law.

This bill would require the commission to adopt rules meeting specified requirements, to transition to a core/noncore electrical market structure. Under the core/noncore market structure, an electrical corporation would have a duty to provide core customers

and core-elect customers, as defined, with electricity, transmission service, distribution service, and auxiliary services, including metering, billing, and public service notifications (bundled service), and would have a duty to provide noncore customers, aggregated noncore customers, grandfathered direct access customers, and green-choice customers, as defined, with transmission service and distribution service on a nondiscriminatory basis. Every noncore, aggregated noncore, grandfathered direct access, and green-choice customer that enters into a direct transaction would be responsible for procuring electricity sufficient to meet its needs and a standardized reserve margin established by the commission in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission) and the Independent System Operator (ISO). This bill would delete the requirement that direct transactions be suspended until the Department of Water Resources no longer supplies electricity through power purchase contracts, and would instead authorize noncore, aggregated noncore, and green-choice customers to enter into direct transactions pursuant to the core/noncore electrical market structure. The bill would make other conforming changes.

(2) Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public. The existing Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives, including the requirement that the procurement plan enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

This bill would instead require that the procurement plan approved by the commission enable the electrical corporation to fulfill its obligation to serve its core customers and core-elect customers, at just and reasonable rates, while minimizing the risk of stranded electricity procurement costs that could result from customers electing to enter into direct transactions pursuant to the core/noncore electrical market structure.

(3) Existing law states the intent of the Legislature that each retail end-use customer that has purchased electricity from an electrical corporation on or after February 1, 2001, should bear a fair share of

the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of January 1, 2003, that are recoverable from electrical corporation customers in commission-approved rates. Existing law states the further intent of the Legislature to prevent any shifting of recoverable costs between customers.

This bill would provide that noncore, aggregated noncore, and green-choice customers are responsible for a fair share of the cost of contracts entered into by the Department of Water Resources and that when a noncore, aggregated noncore, or green-choice customer receives electricity through a direct transaction that is assessed a cost responsibility surcharge that includes ongoing expenses for electricity purchased under long-term contracts entered into by the Department of Water Resources, the customer is entitled to receive the electricity the customer is paying for, or the customer or the customer's electric service provider may apply the electricity to a reserve margin for the customer's load.

(4) Existing law, in implementation of electrical restructuring, requires that the governing board of a local publicly owned electric utility, as defined, determine whether the utility will authorize direct transactions between electricity suppliers and end-use customers.

This bill would require that when a local publicly owned electric utility expands service into a geographical service area of an electrical corporation, any noncore, aggregated noncore, green-choice, or grandfathered direct access customer within that service area receiving electricity through a direct transaction has the right to engage in direct transactions.

(5) Under existing law, a violation of the Public Utilities Act or an order or other action of the commission is a crime.

Certain provisions of this bill would be part of the act and an order or other action of the commission would be required to implement certain of the provisions. Because a violation of the bill's provisions or of an order or action of the commission implementing those provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 216 of the Public Utilities Code is  
2 amended to read:

3 216. (a) "Public utility" includes every common carrier, toll  
4 bridge corporation, pipeline corporation, gas corporation,  
5 electrical corporation, telephone corporation, telegraph  
6 corporation, water corporation, sewer system corporation, and  
7 heat corporation, where the service is performed for, or the  
8 commodity is delivered to, the public or any portion thereof.

9 (b) Whenever any common carrier, toll bridge corporation,  
10 pipeline corporation, gas corporation, electrical corporation,  
11 telephone corporation, telegraph corporation, water corporation,  
12 sewer system corporation, or heat corporation performs a service  
13 for, or delivers a commodity to, the public or any portion thereof  
14 for which any compensation or payment whatsoever is received,  
15 that common carrier, toll bridge corporation, pipeline  
16 corporation, gas corporation, electrical corporation, telephone  
17 corporation, telegraph corporation, water corporation, sewer  
18 system corporation, or heat corporation, is a public utility subject  
19 to the jurisdiction, control, and regulation of the commission and  
20 the provisions of this part.

21 (c) When any person or corporation performs any service for,  
22 or delivers any commodity to, any person, private corporation,  
23 municipality, or other political subdivision of the state, that in  
24 turn either directly or indirectly, mediately or immediately,  
25 performs that service for, or delivers that commodity to, the  
26 public or any portion thereof, that person or corporation is a  
27 public utility subject to the jurisdiction, control, and regulation of  
28 the commission and the provisions of this part.

29 (d) Ownership or operation of a facility that employs  
30 cogeneration technology or produces ~~power~~ *electricity* from other  
31 than a conventional ~~power~~ *electricity* source or the ownership or  
32 operation of a facility which employs landfill gas technology  
33 does not make a corporation or person a public utility within the

1 meaning of this section solely because of the ownership or  
2 operation of that facility.

3 (e) Any corporation or person engaged directly or indirectly in  
4 developing, producing, transmitting, distributing, delivering, or  
5 selling any form of heat derived from geothermal or solar  
6 resources or from cogeneration technology to any privately  
7 owned or publicly owned public utility, or to the public or any  
8 portion thereof, is not a public utility within the meaning of this  
9 section solely by reason of engaging in any of those activities.

10 (f) The ownership or operation of a facility that sells  
11 compressed natural gas at retail to the public for use only as a  
12 motor vehicle fuel, and the selling of compressed natural gas at  
13 retail from that facility to the public for use only as a motor  
14 vehicle fuel, does not make the corporation or person a public  
15 utility within the meaning of this section solely because of that  
16 ownership, operation, or sale.

17 (g) Ownership or operation of a facility that has been certified  
18 by the Federal Energy Regulatory Commission as an exempt  
19 wholesale generator pursuant to Section 32 of the Public Utility  
20 Holding Company Act of 1935 (Chapter 2C (commencing with  
21 Section 79) of Title 15 of the United States Code) does not make  
22 a corporation or person a public utility within the meaning of this  
23 section, solely due to the ownership or operation of that facility.

24 (h) The ownership, control, operation, or management of an  
25 electric plant used for direct transactions or participation directly  
26 or indirectly in direct transactions, as permitted by subdivision  
27 (b) of Section 365, ~~sales into the Power Exchange referred to in~~  
28 ~~Section 365 and Article 17 (commencing with Section 400)~~, or  
29 the use or sale as permitted under subdivisions (b) to (d),  
30 inclusive, of Section 218, shall not make a corporation or person  
31 a public utility within the meaning of this section solely because  
32 of that ownership, participation, or sale.

33 SEC. 2. Section 331 of the Public Utilities Code is amended  
34 to read:

35 331. The definitions set forth in this section shall govern the  
36 construction of this chapter.

37 (a) "Aggregator" means any marketer, broker, public agency,  
38 city, county, or special district, that combines the loads of  
39 multiple end-use customers in facilitating the sale and purchase

1 of ~~electric energy~~ *electricity*, transmission, and other services on  
2 behalf of these customers.

3 (b) “Broker” means an entity that arranges the sale and  
4 purchase of ~~electric energy~~ *electricity*, transmission, and other  
5 services between buyers and sellers, but does not take title to any  
6 of the ~~power~~ *electricity* sold.

7 (c) “Direct transaction” means a contract between any one or  
8 more electric generators, marketers, or brokers of ~~electric power~~  
9 *electricity* and one or more ~~retail~~ *noncore, aggregated noncore,*  
10 *green-choice, or grandfathered direct access* customers  
11 providing for the purchase and sale of ~~electric power~~ *electricity*  
12 or any ancillary services, *pursuant to Article 17 (commencing*  
13 *with Section 400).*

14 (d) “Fire wall” means the line of demarcation separating  
15 residential and small commercial customers from all other  
16 customers as described in subdivision (e) of Section 367.

17 (e) “Marketer” means any entity that buys electric energy,  
18 transmission, and other services from traditional utilities and  
19 other suppliers, and then resells those services at wholesale or to  
20 an end-use customer.

21 (f) “Microcogeneration facility” means a cogeneration facility  
22 of less than one megawatt.

23 (g) “Restructuring trusts” means the two tax-exempt public  
24 benefit trusts established by Decision 96-08-038 of the Public  
25 Utilities Commission to provide for design and development of  
26 the hardware and software systems for the Power Exchange and  
27 the Independent System Operator, respectively, and that may  
28 undertake other activities, as needed, as ordered by the  
29 commission.

30 (h) “Small commercial customer” means a customer that has a  
31 maximum peak demand of less than 20 kilowatts.

32 SEC. 3. Section 365 of the Public Utilities Code is amended  
33 to read:

34 365. ~~The actions of the commission pursuant to this chapter~~  
35 ~~shall be consistent with the findings and declarations contained in~~  
36 ~~Section 330. In addition, the commission shall do all of the~~  
37 ~~following:~~

38 (a) ~~Facilitate the efforts of the state’s electrical corporations to~~  
39 ~~develop and obtain authorization from the Federal Energy~~  
40 ~~Regulatory Commission for the creation and operation of an~~

1 ~~Independent System Operator and an independent Power~~  
2 ~~Exchange, for the determination of which transmission and~~  
3 ~~distribution facilities are subject to the exclusive jurisdiction of~~  
4 ~~the commission, and for approval, to the extent necessary, of the~~  
5 ~~cost recovery mechanism established as provided in Sections 367~~  
6 ~~to 376, inclusive. The commission shall also participate~~  
7 *Participate* fully in all proceedings before the Federal Energy  
8 Regulatory Commission in connection with the Independent  
9 System Operator and ~~the independent Power Exchange, and shall~~  
10 encourage the Federal Energy Regulatory Commission to adopt  
11 protocols and procedures that strengthen the reliability of the  
12 interconnected transmission grid, encourage all publicly owned  
13 utilities in California to become full participants, and maximize  
14 enforceability of such protocols and procedures by all market  
15 participants.

16 ~~(b) (1) Authorize direct transactions between electricity~~  
17 ~~suppliers and end use customers, subject to implementation of~~  
18 ~~the nonbypassable charge referred to in Sections 367 to 376,~~  
19 ~~inclusive. Direct transactions shall commence simultaneously~~  
20 ~~with the start of an Independent System Operator and Power~~  
21 ~~Exchange referred to in subdivision (a). The simultaneous~~  
22 ~~commencement shall occur as soon as practicable, but no later~~  
23 ~~than January 1, 1998. The commission shall develop a phase-in~~  
24 ~~schedule at the conclusion of which all customers shall have the~~  
25 ~~right to engage in direct transactions. Any phase-in of customer~~  
26 ~~eligibility for direct transactions ordered by the commission shall~~  
27 ~~be equitable to all customer classes and accomplished as soon as~~  
28 ~~practicable, consistent with operational and other technological~~  
29 ~~considerations, and shall be completed for all customers by~~  
30 ~~January 1, 2002.~~

31 ~~(2) Customers shall be eligible for direct access irrespective of~~  
32 ~~any direct access phase-in implemented pursuant to this section if~~  
33 ~~at least one-half of that customer's electrical load is supplied by~~  
34 ~~energy from a renewable resource provider certified pursuant to~~  
35 ~~Section 383, provided however that nothing in this section shall~~  
36 ~~provide for direct access for electric consumers served by~~  
37 ~~municipal utilities unless so authorized by the governing board of~~  
38 ~~that municipal utility.~~

39 *(b) (1) Transition the electrical market to a core/noncore*  
40 *model, consistent with Article 17 (commencing with Section 400).*

(2) Take any action necessary to preserve the ability of a grandfathered direct access customer to continue to receive electricity through a direct transaction. A grandfathered direct access customer shall have all the rights and obligations of a noncore customer under Article 17 (commencing with Section 400).

SEC. 4. Section 366 of the Public Utilities Code is amended to read:

366. ~~(a)~~—The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers consistent with a core/noncore market structure, pursuant to Article 17 (commencing with Section 400). ~~Customers shall be entitled to aggregate their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a noncore customer to obtain electricity from an electric service provider, that customer shall continue to be served by the existing electrical corporation or its successor in interest, except aggregation by community choice aggregators, accomplished pursuant to Section 366.2.~~

~~(b) Aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited, to small commercial or residential customers. Aggregation may be accomplished by private market aggregators, special districts, or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers, except aggregation by community choice aggregators, which shall be accomplished pursuant to Section 366.2.~~

SEC. 5. Section 366.2 of the Public Utilities Code is amended to read:

366.2. (a) (1) Customers shall be entitled to aggregate their electric loads as members of their local community with community choice aggregators.

(2) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community's aggregation program.

(3) If a customer opts out of a community choice aggregator's program, or has no community choice program available, that



customer shall have the right to continue to be served by the existing electrical corporation or its successor in interest. *If a noncore customer, aggregated noncore customer, grandfathered direct access customer, or green-choice customer opts out of a community choice aggregator's program, the customer may elect to purchase electricity from an electric service provider pursuant to Article 17 (commencing with Section 400).*

(b) If a public agency seeks to serve as a community choice aggregator, it shall offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

(c) (1) ~~Notwithstanding Section 366, a~~ A community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts. However, the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility, as defined in subdivision (d) of Section 9604. A community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers. The community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electricity and other related services. Those service agreements may be entered into by a single city or county, a city and county, or by a group of cities, cities and counties, or counties.

(2) Under community choice aggregation, customer participation may not require a positive written declaration, but all customers shall be informed of their right to opt out of the community choice aggregation program. If no negative declaration is made by a customer, that customer shall be served through the community choice aggregation program.

(3) A community choice aggregator establishing electrical load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. The implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public hearing. The implementation plan shall contain all of the following:

(A) An organizational structure of the program, its operations, and its funding.

1 (B) Ratesetting and other costs to participants.

2 (C) Provisions for disclosure and due process in setting rates  
3 and allocating costs among participants.

4 (D) The methods for entering and terminating agreements with  
5 other entities.

6 (E) The rights and responsibilities of program participants,  
7 including, but not limited to, consumer protection procedures,  
8 credit issues, and shutoff procedures.

9 (F) Termination of the program.

10 (G) A description of the third parties that will be supplying  
11 electricity under the program, including, but not limited to,  
12 information about financial, technical, and operational  
13 capabilities.

14 (4) A community choice aggregator establishing electrical  
15 load aggregation shall prepare a statement of intent with the  
16 implementation plan. Any community choice load aggregation  
17 established pursuant to this section shall provide for the  
18 following:

19 (A) Universal access.

20 (B) Reliability.

21 (C) Equitable treatment of all classes of customers.

22 (D) Any requirements established by state law or by the  
23 commission concerning aggregated service.

24 (5) In order to determine the cost-recovery mechanism to be  
25 imposed on the community choice aggregator pursuant to  
26 subdivisions (d), (e), and (f) that shall be paid by the customers  
27 of the community choice aggregator to prevent shifting of costs,  
28 the community choice aggregator shall file the implementation  
29 plan with the commission, and any other information requested  
30 by the commission that the commission determines is necessary  
31 to develop the cost-recovery mechanism in subdivisions (d), (e),  
32 and (f).

33 (6) The commission shall notify any electrical corporation  
34 serving the customers proposed for aggregation that an  
35 implementation plan initiating community choice aggregation  
36 has been filed, within 10 days of the filing.

37 (7) Within 90 days after the community choice aggregator  
38 establishing load aggregation files its implementation plan, the  
39 commission shall certify that it has received the implementation  
40 plan, including any additional information necessary to

1 determine a cost-recovery mechanism. After certification of  
2 receipt of the implementation plan and any additional  
3 information requested, the commission shall then provide the  
4 community choice aggregator with its findings regarding any  
5 cost recovery that must be paid by customers of the community  
6 choice aggregator to prevent a shifting of costs as provided for in  
7 subdivisions (d), (e), and (f).

8 (8) No entity proposing community choice aggregation shall  
9 act to furnish electricity to electricity consumers within its  
10 boundaries until the commission determines the cost-recovery  
11 that must be paid by the customers of that proposed community  
12 choice aggregation program, as provided for in subdivisions (d),  
13 (e), and (f). The commission shall designate the earliest possible  
14 effective date for implementation of a community choice  
15 aggregation program, taking into consideration the impact on any  
16 annual procurement plan of the electrical corporation that has  
17 been approved by the commission.

18 (9) All electrical corporations shall cooperate fully with any  
19 community choice aggregators that investigate, pursue, or  
20 implement community choice aggregation programs.  
21 Cooperation shall include providing the entities with appropriate  
22 billing and electrical load data, including, but not limited to, data  
23 detailing electricity needs and patterns of usage, as determined  
24 by the commission, and in accordance with procedures  
25 established by the commission. Electrical corporations shall  
26 continue to provide all metering, billing, collection, and customer  
27 service to retail customers that participate in community choice  
28 aggregation programs. Bills sent by the electrical corporation to  
29 retail customers shall identify the community choice aggregator  
30 as providing the electrical energy component of the bill. The  
31 commission shall determine the terms and conditions under  
32 which the electrical corporation provides services to community  
33 choice aggregators and retail customers.

34 (10) (A) A city, county, or city and county that elects to  
35 implement a community choice aggregation program within its  
36 jurisdiction pursuant to this chapter shall do so by ordinance.

37 (B) Two or more cities, counties, or cities and counties may  
38 participate as a group in a community choice aggregation  
39 pursuant to this chapter, through a joint powers agency  
40 established pursuant to Chapter 5 (commencing with Section

1 6500) of Division 7 of Title 1 of the Government Code, if each  
2 entity adopts an ordinance pursuant to subparagraph (A).

3 (11) Following adoption of aggregation through the ordinance  
4 described in paragraph (10), the program shall allow any retail  
5 customer to opt out and to continue to be served as a bundled  
6 service customer by the existing electrical corporation, or its  
7 successor in interest. Delivery services shall be provided at the  
8 same rates, terms, and conditions, as approved by the  
9 commission, for community choice aggregation customers and  
10 customers that have entered into a direct transaction where  
11 applicable, as determined by the commission. Once enrolled in  
12 the aggregated entity, any ratepayer that chooses to opt out  
13 within 60 days or two billing cycles of the date of enrollment  
14 may do so without penalty and shall be entitled to receive default  
15 service pursuant to paragraph (3) of subdivision (a). Customers  
16 that return to the electrical corporation for procurement services  
17 shall be subject to the same terms and conditions as are  
18 applicable to other returning direct access customers from the  
19 same class, as determined by the commission, as authorized by  
20 the commission pursuant to this code or any other provision of  
21 law. Any reentry fees to be imposed after the opt-out period  
22 specified in this paragraph, shall be approved by the commission  
23 and shall reflect the cost of reentry. The commission shall  
24 exclude any amounts previously determined and paid pursuant to  
25 subdivisions (d), (e), and (f) from the cost of reentry.

26 (12) Nothing in this section shall be construed as authorizing  
27 any city or any community choice retail load aggregator to  
28 restrict the ability of retail electricity customers to obtain or  
29 receive service from any authorized electric service provider in a  
30 manner consistent with law.

31 (13) (A) The community choice aggregator shall fully inform  
32 participating customers at least twice within two calendar  
33 months, or 60 days, in advance of the date of commencing  
34 automatic enrollment. Notifications may occur concurrently with  
35 billing cycles. Following enrollment, the aggregated entity shall  
36 fully inform participating customers for not less than two  
37 consecutive billing cycles. Notification may include, but is not  
38 limited to, direct mailings to customers, or inserts in water,  
39 sewer, or other utility bills. Any notification shall inform  
40 customers of both of the following:

1 (i) That they are to be automatically enrolled and that the  
2 customer has the right to opt out of the community choice  
3 aggregator without penalty.

4 (ii) The terms and conditions of the services offered.

5 (B) The community choice aggregator may request the  
6 commission to approve and order the electrical corporation to  
7 provide the notification required in subparagraph (A). If the  
8 commission orders the electrical corporation to send one or more  
9 of the notifications required pursuant to subparagraph (A) in the  
10 electrical corporation's normally scheduled monthly billing  
11 process, the electrical corporation shall be entitled to recover  
12 from the community choice aggregator all reasonable  
13 incremental costs it incurs related to the notification or  
14 notifications. The electrical corporation shall fully cooperate with  
15 the community choice aggregator in determining the feasibility  
16 and costs associated with using the electrical corporation's  
17 normally scheduled monthly billing process to provide one or  
18 more of the notifications required pursuant to subparagraph (A).

19 (C) Each notification shall also include a mechanism by which  
20 a ratepayer may opt out of community choice aggregated service.  
21 The opt out may take the form of a self-addressed return postcard  
22 indicating the customer's election to remain with, or return to,  
23 electrical energy service provided by the electrical corporation,  
24 or another straightforward means by which the customer may  
25 elect to derive electrical energy service through the electrical  
26 corporation providing service in the area.

27 (14) The community choice aggregator shall register with the  
28 commission, which may require additional information to ensure  
29 compliance with basic consumer protection rules and other  
30 procedural matters.

31 (15) Once the community choice aggregator's contract is  
32 signed, the community choice aggregator shall notify the  
33 applicable electrical corporation that community choice service  
34 will commence within 30 days.

35 (16) Once notified of a community choice aggregator  
36 program, the electrical corporation shall transfer all applicable  
37 accounts to the new supplier within a 30-day period from the date  
38 of the close of their normally scheduled monthly metering and  
39 billing process.

1 (17) An electrical corporation shall recover from the  
2 community choice aggregator any costs reasonably attributable to  
3 the community choice aggregator, as determined by the  
4 commission, of implementing this section, including, but not  
5 limited to, all business and information system changes, except  
6 for transaction-based costs as described in this paragraph. Any  
7 costs not reasonably attributable to a community choice  
8 aggregator shall be recovered from ratepayers, as determined by  
9 the commission. All reasonable transaction-based costs of  
10 notices, billing, metering, collections, and customer  
11 communications or other services provided to an aggregator or its  
12 customers shall be recovered from the aggregator or its  
13 customers on terms and at rates to be approved by the  
14 commission.

15 (18) At the request and expense of any community choice  
16 aggregator, electrical corporations shall install, maintain and  
17 calibrate metering devices at mutually agreeable locations within  
18 or adjacent to the community aggregator's political boundaries.  
19 The electrical corporation shall read the metering devices and  
20 provide the data collected to the community aggregator at the  
21 aggregator's expense. To the extent that the community  
22 aggregator requests a metering location that would require  
23 alteration or modification of a circuit, the electrical corporation  
24 shall only be required to alter or modify a circuit if such  
25 alteration or modification does not compromise the safety,  
26 reliability or operational flexibility of the electrical corporation's  
27 facilities. All costs incurred to modify circuits pursuant to this  
28 paragraph, shall be born by the community aggregator.

29 (d) (1) It is the intent of the Legislature that each retail  
30 end-use customer that has purchased ~~power~~ *electricity* from an  
31 electrical corporation on or after February 1, 2001, should bear a  
32 fair share of the Department of Water Resources' electricity  
33 purchase costs, as well as electricity purchase contract  
34 obligations incurred as of the effective date of the act adding this  
35 section, that are recoverable from electrical corporation  
36 customers in commission-approved rates. It is further the intent  
37 of the Legislature to prevent any shifting of recoverable costs  
38 between customers.

39 (2) The Legislature finds and declares that this subdivision is  
40 consistent with the requirements of Division 27 (commencing

1 with Section 80000) of the Water Code and Section 360.5, and is  
2 therefore declaratory of existing law.

3 (e) A retail end-use customer that purchases electricity from a  
4 community choice aggregator pursuant to this section shall pay  
5 both of the following:

6 (1) A charge equivalent to the charges that would otherwise be  
7 imposed on the customer by the commission to recover bond  
8 related costs pursuant to any agreement between the commission  
9 and the Department of Water Resources pursuant to Section  
10 80110 of the Water Code, which charge shall be payable until  
11 any obligations of the Department of Water Resources pursuant  
12 to Division 27 (commencing with Section 80000) of the Water  
13 Code are fully paid or otherwise discharged.

14 (2) Any additional costs of the Department of Water  
15 Resources, equal to the customer's proportionate share of the  
16 Department of Water Resources' estimated net unavoidable  
17 electricity purchase contract costs as determined by the  
18 commission, for the period commencing with the customer's  
19 purchases of electricity from the community choice aggregator,  
20 through the expiration of all then existing electricity purchase  
21 contracts entered into by the Department of Water Resources.

22 (f) A retail end-use customer purchasing electricity from a  
23 community choice aggregator pursuant to this section shall  
24 reimburse the electrical corporation that previously served the  
25 customer for all of the following:

26 (1) The electrical corporation's unrecovered past  
27 undercollections for electricity purchases, including any  
28 financing costs, attributable to that customer, that the  
29 commission lawfully determines may be recovered in rates.

30 (2) Any additional costs of the electrical corporation  
31 recoverable in commission-approved rates, equal to the share of  
32 the electrical corporation's estimated net unavoidable electricity  
33 purchase contract costs attributable to the customer, as  
34 determined by the commission, for the period commencing with  
35 the customer's purchases of electricity from the community  
36 choice aggregator, through the expiration of all then existing  
37 electricity purchase contracts entered into by the electrical  
38 corporation.

39 (g) (1) Any charges imposed pursuant to subdivision (e) shall  
40 be the property of the Department of Water Resources. Any

1 charges imposed pursuant to subdivision (f) shall be the property  
2 of the electrical corporation. The commission shall establish  
3 mechanisms, including agreements with, or orders with respect  
4 to, electrical corporations necessary to ensure that charges  
5 payable pursuant to this section shall be promptly remitted to the  
6 party entitled to payment.

7 (2) Charges imposed pursuant to subdivisions (d), (e), and (f)  
8 shall be nonbypassable.

9 (h) Notwithstanding Section 80110 of the Water Code, the  
10 commission shall authorize community choice aggregation only  
11 if the commission imposes a cost-recovery mechanism pursuant  
12 to subdivisions (d), (e), (f), and (g). Except as provided by this  
13 subdivision, this section shall not alter the suspension by the  
14 commission of direct purchases of electricity from alternate  
15 providers other than by community choice aggregators, pursuant  
16 to Section 80110 of the Water Code.

17 (i) (1) The commission shall not authorize community choice  
18 aggregation until it implements a cost-recovery mechanism,  
19 consistent with subdivisions (d), (e), and (f), that is applicable to  
20 customers that elected to purchase electricity from an alternate  
21 provider between February 1, 2001, and January 1, 2003.

22 (2) The commission shall not authorize community choice  
23 aggregation until it submits a report certifying compliance with  
24 paragraph (1) to the Senate Energy, Utilities and  
25 Communications Committee, or its successor, and the Assembly  
26 Committee on Utilities and Commerce, or its successor.

27 (3) The commission shall not authorize community choice  
28 aggregation until it has adopted rules for implementing  
29 community choice aggregation.

30 (j) The commission shall prepare and submit to the  
31 Legislature, on or before January 1, 2006, a report regarding the  
32 number of community choices aggregations, the number of  
33 customers served by community choice aggregations, third party  
34 suppliers to community choice aggregations, compliance with  
35 this section, and the overall effectiveness of community choice  
36 aggregation programs.

37 SEC. 6. Section 399.20 is added to the Public Utilities Code,  
38 to read:

39 399.20. A retail seller shall have a separate and divisible  
40 renewables portfolio standard for green-choice customers, as



defined in Section 400, and for all other customers that are not green-choice customers. The minimum quantity requirements for procurement of electricity from eligible renewable energy resources established under this article apply separately to the group of customers that are green-choice customers and to the group of customers that are not green-choice customers.

SEC. 7. Article 17 (commencing with Section 400) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 17. Core/Noncore Electrical Market Structure

400. As used in this article, the following terms have the following meanings:

(a) “Aggregated noncore customer” means a customer under common ownership with multiple locations within the service area of a single electrical corporation, with an aggregated load of in excess of 200 kilowatts or more. “Aggregated noncore customer” also means a customer of a common type that is separately owned, with multiple locations within the service area of a single electrical corporation, that has a common agent for the procurement of electricity, and has an aggregated load of 200 kilowatts or more.

(b) “Bundled service” means electricity commodity service, transmission service, distribution service, and auxiliary services, including metering, billing, and public service notifications, provided by an electrical corporation at a commission approved rate.

(c) “Core customer” means a retail end-use consumer of electricity within the service territory of an electrical corporation with a maximum aggregate peak demand of less than 200 kilowatts.

(d) “Core-elect customer” means a retail end-use consumer of electricity within the service territory of an electrical corporation with a maximum aggregate peak demand of 200 kilowatts or more, that has not elected to purchase electricity from an electric service provider.

(e) “Grandfathered direct access core customer” means a core customer that received electricity through a direct transaction that

1 was not suspended by the commission after September 20, 2001,  
2 pursuant to Section 80110 of the Water Code.

3 (f) “Green-choice customer” means a retail end-use consumer  
4 of electricity within the service territory of an electrical  
5 corporation with a maximum aggregate peak demand of less than  
6 200 kilowatts, that elects to receive electricity that is generated  
7 entirely from an eligible renewable energy resource, as defined in  
8 Section 399.12. By December 31, 2010, at least 20 percent of the  
9 electricity sold by a retail seller to green-choice customers shall  
10 be generated from eligible renewable energy resources that  
11 commence operation after January 1, 2005.

12 (g) “Noncore customer” means a retail end-use consumer of  
13 electricity within the service territory of an electrical corporation  
14 with a maximum aggregate peak demand of 200 kilowatts or  
15 more, that has elected to procure electricity through a direct  
16 transaction. A customer with a master meter, that has a maximum  
17 peak demand of 200 kilowatts or more is a “noncore customer”  
18 without regard to the existence of submeters with a maximum  
19 peak demand of less than 200 kilowatts.

20 400.1. The commission shall establish rules for the orderly  
21 transition to a core/noncore electrical market structure that  
22 accomplish all of the following:

23 (a) An electrical corporation shall have a duty to provide core  
24 customers and core-elect customers with bundled service. Every  
25 green-choice customer, noncore customer, aggregated noncore  
26 customer, and grandfathered direct access core customer, shall be  
27 responsible for procuring electricity sufficient to meet its needs  
28 and a standardized reserve margin to be established by the  
29 commission, in consultation with the State Energy Resources  
30 Conservation and Development Commission and the  
31 Independent System Operator.

32 (b) A core-elect customer may, upon providing the electrical  
33 corporation with at least one year’s notice, enter into a direct  
34 transaction. Core-elect customers that do not affirmatively elect  
35 to receive bundled service from the electrical corporation by  
36 October 15, 2006, shall receive bundled service from the  
37 electrical corporation beginning March 15, 2007, pursuant to a  
38 temporary service tariff. The temporary service tariff shall reflect  
39 the electrical corporation's actual cost differences to procure  
40 electricity to meet anticipated demand and commission approved

1 reserve levels, for the one-year period that the electrical  
2 corporation is obligated to supply electricity to core-elect  
3 customers that do not affirmatively elect to receive service from  
4 either an electric service provider or the electrical corporation.  
5 The cost of electricity under the temporary service tariff shall not  
6 be less than the averaged cost for electricity incurred by the  
7 electrical corporation pursuant to its procurement plan approved  
8 by the commission pursuant to Section 454.5.

9 (c) Core-elect customers that affirmatively elect to receive  
10 bundled service from the electrical corporation shall receive  
11 bundled service at the regular tariff rate. The commission may  
12 adopt rules or orders that authorize a core-elect customer to  
13 affirmatively elect to receive bundled service for a specified  
14 period of time at rates that reflect the electrical corporation's  
15 reasonable cost of procuring electricity for that time period. The  
16 commission may adopt rules or orders that permit a core-elect  
17 customer that affirmatively elects to receive bundled service to  
18 thereafter elect to enter into a direct transaction, provided that the  
19 later election to procure electricity through a direct transaction  
20 does not result in unrecovered stranded electricity purchase costs  
21 for the electrical utility.

22 (d) A noncore customer that has elected to contract to receive  
23 electricity from an electric service provider may thereafter  
24 affirmatively elect to receive bundled service from the electrical  
25 corporation. A noncore customer that contracts to purchase  
26 electricity from an electric service provider that thereafter  
27 affirmatively elects to receive bundled service from the electrical  
28 corporation, shall not receive bundled service from the electrical  
29 corporation at regular tariff rates until one year after providing  
30 notice of the election to return to bundled service or upon the  
31 electrical corporation's affirmative agreement to serve the  
32 noncore customer. An electrical corporation's agreement to serve  
33 the noncore customer shall not result in any costs being shifted to  
34 core customers. A noncore customer that contracts to purchase  
35 electricity from an electric service provider that thereafter  
36 affirmatively elects to receive bundled service from the electrical  
37 corporation, may receive bundled service with less than one  
38 year's notice upon the expiration of its contract with the electric  
39 service provider, and without the affirmative agreement of the  
40 electrical corporation, under the temporary service tariff.

1 (e) Up to 5 percent of an electrical corporation's residential  
2 and small commercial load may, on a first-come basis, elect to  
3 become green-choice customers. A customer may elect to  
4 become a green-choice customer upon providing the electrical  
5 corporation with at least 30 days' notice before receiving  
6 electricity from an electric service provider that is generated  
7 entirely from an eligible renewable energy resource, as defined in  
8 Section 399.12. A green-choice customer may elect to return to  
9 bundled service from the electrical corporation upon providing  
10 the electrical corporation with at least 30 days' notice. An  
11 electrical corporation may offer customers the option of  
12 receiving electricity that is generated entirely from an eligible  
13 renewable energy resource, as defined in Section 399.12,  
14 pursuant to a program authorized by the commission.

15 (f) An electrical corporation shall have a duty to provide  
16 green-choice customers, noncore customers, aggregated noncore  
17 customers, and grandfathered direct access core customers with  
18 transmission service and distribution service. The electrical  
19 corporation shall not discriminate between core customers,  
20 core-elect customers, green-choice customers, noncore  
21 customers, aggregated noncore customers, and grandfathered  
22 direct access core customers as to rates, charges, or service  
23 within class, with respect to transmission and distribution  
24 service.

25 (g) A green-choice customer, noncore customer, aggregated  
26 noncore customer, and a grandfathered direct access core  
27 customer shall receive auxiliary services from the electrical  
28 corporation unless the customer notifies the electrical corporation  
29 that it has contracted for those services to be supplied by an  
30 electric service provider. Rates and charges for auxiliary services  
31 performed by electrical corporations for green-choice customers,  
32 noncore customers, aggregated noncore customers, and  
33 grandfathered direct access core customers shall remain subject  
34 to regulation by the commission. All customers, including  
35 green-choice customers, noncore customers, aggregated noncore  
36 customers, and a grandfathered direct access core customers,  
37 shall be eligible to participate in any program funded through a  
38 nonbypassable element of local distribution service pursuant to  
39 Article 7 (commencing with Section 381) or Article 15  
40 (commencing with Section 399).

1 (h) The commission shall open an investigation or other  
2 appropriate proceeding to develop a system for the provision of  
3 default electrical service for noncore customers, aggregated  
4 noncore customers, and grandfathered direct access core  
5 customers that no longer receive electricity from an electric  
6 service provider, including when an electric service provider  
7 goes out of business and when the contract with an electric  
8 service provider terminates and the customer has not begun to  
9 receive electricity under a replacement direct transaction. The  
10 commission shall report to the Legislature by December 31,  
11 2006, with recommendations for a system to provide default  
12 service. It is the intent of the Legislature that any system to  
13 provide default service be open and competitive and that  
14 purchases of electricity be for periods of time determined by the  
15 commission to produce optimal results for reliability and price,  
16 while affording noncore customers, aggregated noncore  
17 customers, and grandfathered direct access core customers  
18 opportunities to purchase their electricity supply through a direct  
19 transaction without stranded costs. The system for the provision  
20 of default electrical service may aggregate electricity demand by  
21 geographical area to account for transmission capabilities.

22 (i) Until the commission develops, and the Legislature adopts,  
23 a system for the provision of default electrical service for  
24 noncore customers, aggregated noncore customers, and  
25 grandfathered direct access core customers, those customers  
26 returning to electrical service by the electrical corporation shall  
27 receive service under the temporary service tariff. Noncore  
28 customers, aggregated noncore customers, and grandfathered  
29 direct access core customers returning to electrical service by the  
30 electrical corporation shall have up to six months to begin to  
31 receive electricity from a replacement electric service provider  
32 and shall provide at least 30 days' notice to the electrical  
33 corporation before receiving electricity from a replacement  
34 electric service provider. Noncore customers, aggregated noncore  
35 customers, and grandfathered direct access core customers  
36 returning to electrical service by the electrical corporation that  
37 fail to begin to receive electricity from a replacement electric  
38 service provider within six months, shall become core-elect  
39 customers.

(j) Noncore customers, aggregated noncore customers, and green-choice customers, shall be responsible for a fair share of the cost of contracts entered into by the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code, in an amount to be determined by the commission. A noncore customer, aggregated noncore customer, or grandfathered direct access core customer that receives electricity through a direct transaction that is assessed a cost responsibility surcharge that includes ongoing expenses for electricity purchased under long-term contracts entered into by the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code, shall be entitled to receive the electricity the customer is paying for, or the customer or the customer's electric service provider may apply the electricity to a reserve margin for the customer's load.

400.2. The commission shall approve any form employed by an electrical corporation for a noncore customer to affirmatively elect to receive electricity and auxiliary services from the electrical corporation as a core-elect customer.

400.3. The commission shall, by rulemaking or other appropriate procedure, ensure the avoidance of cross subsidies by an electrical company between different duties of service, including rules that prevent an electrical corporation from allocating costs to transmission and distribution services that should be allocated to electricity and generation resources.

400.4. The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall develop and implement mechanisms to verify that green-choice customers receive electricity generated entirely from eligible renewable energy resources, as defined in Section 399.

SEC. 8. Section 454.5 of the Public Utilities Code, as added by Section 3 of Chapter 850 of the Statutes of 2002, is amended to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with

1 the commission not later than 60 days after the commission  
2 specifies the allocation of electricity. The proposed procurement  
3 plan shall specify the date that the electrical corporation intends  
4 to resume procurement of electricity for its retail customers,  
5 consistent with its obligation to serve. After the commission's  
6 adoption of a procurement plan, the commission shall allow not  
7 less than 60 days before the electrical corporation resumes  
8 procurement pursuant to this section.

9 (b) An electrical corporation's proposed procurement plan  
10 shall include, but not be limited to, all of the following:

11 (1) An assessment of the price risk associated with the  
12 electrical corporation's portfolio, including any utility-retained  
13 generation, existing power purchase and exchange contracts, and  
14 proposed contracts or purchases under which an electrical  
15 corporation will procure electricity, electricity demand  
16 reductions, and electricity-related products and the remaining  
17 open position to be served by spot market transactions.

18 (2) A definition of each electricity product, electricity-related  
19 product, and procurement related financial product, including  
20 support and justification for the product type and amount to be  
21 procured under the plan.

22 (3) The duration of the plan.

23 (4) The duration, timing, and range of quantities of each  
24 product to be procured.

25 (5) A competitive procurement process under which the  
26 electrical corporation may request bids for procurement-related  
27 services, including the format and criteria of that procurement  
28 process.

29 (6) An incentive mechanism, if any incentive mechanism is  
30 proposed, including the type of transactions to be covered by that  
31 mechanism, their respective procurement benchmarks, and other  
32 parameters needed to determine the sharing of risks and benefits.

33 (7) The upfront standards and criteria by which the  
34 acceptability and eligibility for rate recovery of a proposed  
35 procurement transaction will be known by the electrical  
36 corporation prior to execution of the transaction. This shall  
37 include an expedited approval process for the commission's  
38 review of proposed contracts and subsequent approval or  
39 rejection thereof. The electrical corporation shall propose

1 alternative procurement choices in the event a contract is  
2 rejected.

3 (8) Procedures for updating the procurement plan.

4 (9) A showing that the procurement plan will achieve the  
5 following:

6 (A) The electrical corporation will, in order to fulfill its unmet  
7 resource needs and in furtherance of Section 701.3, until a 20  
8 percent renewable resources portfolio is achieved, procure  
9 renewable energy resources with the goal of ensuring that at least  
10 an additional 1 percent per year of the electricity sold by the  
11 electrical corporation is generated from renewable energy  
12 resources, provided sufficient funds are made available pursuant  
13 to Section 399.6, to cover the above-market costs for new  
14 renewable energy resources.

15 (B) The electrical corporation will create or maintain a  
16 diversified procurement portfolio consisting of both short-term  
17 and long-term electricity and electricity-related and demand  
18 reductions products.

19 (10) The electrical corporation's risk management policy,  
20 strategy, and practices, including specific measures of price  
21 stability.

22 (11) A plan to achieve appropriate increases in diversity of  
23 ownership and diversity of fuel supply of nonutility electrical  
24 generation.

25 (12) A mechanism for recovery of reasonable administrative  
26 costs related to procurement in the generation component of  
27 rates.

28 (c) The commission shall review and accept, modify, or reject  
29 each electrical corporation's procurement plan. The  
30 commission's review shall consider each electrical corporation's  
31 individual procurement situation, and shall give strong  
32 consideration to that situation in determining which one or more  
33 of the features set forth in this subdivision shall apply to that  
34 electrical corporation. A procurement plan approved by the  
35 commission shall contain one or more of the following features,  
36 provided that the commission may not approve a feature or  
37 mechanism for an electrical corporation if it finds that the feature  
38 or mechanism would impair the restoration of an electrical  
39 corporation's creditworthiness or would lead to a deterioration of  
40 an electrical corporation's creditworthiness:



1 (1) A competitive procurement process under which the  
2 electrical corporation may request bids for procurement-related  
3 services. The commission shall specify the format of that  
4 procurement process, as well as criteria to ensure that the auction  
5 process is open and adequately subscribed. Any purchases made  
6 in compliance with the commission-authorized process shall be  
7 recovered in the generation component of rates.

8 (2) An incentive mechanism that establishes a procurement  
9 benchmark or benchmarks and authorizes the electrical  
10 corporation to procure from the market, subject to comparing the  
11 electrical corporation's performance to the  
12 commission-authorized benchmark or benchmarks. The incentive  
13 mechanism shall be clear, achievable, and contain quantifiable  
14 objectives and standards. The incentive mechanism shall contain  
15 balanced risk and reward incentives that limit the risk and reward  
16 of an electrical corporation.

17 (3) Upfront achievable standards and criteria by which the  
18 acceptability and eligibility for rate recovery of a proposed  
19 procurement transaction will be known by the electrical  
20 corporation prior to the execution of the bilateral contract for the  
21 transaction. The commission shall provide for expedited review  
22 and either approve or reject the individual contracts submitted by  
23 the electrical corporation to ensure compliance with its  
24 procurement plan. To the extent the commission rejects a  
25 proposed contract pursuant to this criteria, the commission shall  
26 designate alternative procurement choices obtained in the  
27 procurement plan that will be recoverable for ratemaking  
28 purposes.

29 (d) A procurement plan approved by the commission shall  
30 accomplish each of the following objectives:

31 (1) Enable the electrical corporation to fulfill its obligation to  
32 serve its *core and core-elect* customers, as defined in Section  
33 400, at just and reasonable rates, while minimizing the risk of  
34 stranded electricity procurement costs that could result from  
35 customers electing to enter into direct transactions pursuant to  
36 Article 17 (commencing with Section 400).

37 (2) Eliminate the need for after-the-fact reasonableness  
38 reviews of an electrical corporation's actions in compliance with  
39 an approved procurement plan, including resulting electricity  
40 procurement contracts, practices, and related expenses. However,

1 the commission may establish a regulatory process to verify and  
2 assure that each contract was administered in accordance with the  
3 terms of the contract, and contract disputes which may arise are  
4 reasonably resolved.

5 (3) Ensure timely recovery of prospective procurement costs  
6 incurred pursuant to an approved procurement plan. The  
7 commission shall establish rates based on forecasts of  
8 procurement costs adopted by the commission, actual  
9 procurement costs incurred, or combination thereof, as  
10 determined by the commission. The commission shall establish  
11 power procurement balancing accounts to track the differences  
12 between recorded revenues and costs incurred pursuant to an  
13 approved procurement plan. The commission shall review the  
14 power procurement balancing accounts, not less than  
15 semiannually, and shall adjust rates or order refunds, as  
16 necessary, to promptly amortize a balancing account, according  
17 to a schedule determined by the commission. Until January 1,  
18 2006, the commission shall ensure that any overcollection or  
19 undercollection in the power procurement balancing account  
20 does not exceed 5 percent of the electrical corporation's actual  
21 recorded generation revenues for the prior calendar year  
22 excluding revenues collected for the Department of Water  
23 Resources. The commission shall determine the schedule for  
24 amortizing the overcollection or undercollection in the balancing  
25 account to ensure that the 5 percent threshold is not exceeded.  
26 After January 1, 2006, this adjustment shall occur when deemed  
27 appropriate by the commission consistent with the objectives of  
28 this section.

29 (4) Moderate the price risk associated with serving its retail  
30 customers, including the price risk embedded in its long-term  
31 supply contracts, by authorizing an electrical corporation to enter  
32 into financial and other electricity-related product contracts.

33 (5) Provide for just and reasonable rates, with an appropriate  
34 balancing of price stability and price level in the electrical  
35 corporation's procurement plan.

36 (e) The commission shall provide for the periodic review and  
37 prospective modification of an electrical corporation's  
38 procurement plan.

39 (f) The commission may engage an independent consultant or  
40 advisory service to evaluate risk management and strategy. The

1 reasonable costs of any consultant or advisory service is a  
2 reimbursable expense and eligible for funding pursuant to  
3 Section 631.

4 (g) The commission shall adopt appropriate procedures to  
5 ensure the confidentiality of any market sensitive information  
6 submitted in an electrical corporation's proposed procurement  
7 plan or resulting from or related to its approved procurement  
8 plan, including, but not limited to, proposed or executed power  
9 purchase agreements, data request responses, or consultant  
10 reports, or any combination, provided that the Office of  
11 Ratepayer Advocates and other consumer groups that are  
12 nonmarket participants shall be provided access to this  
13 information under confidentiality procedures authorized by the  
14 commission.

15 (h) Nothing in this section alters, modifies, or amends the  
16 commission's oversight of affiliate transactions under its rules  
17 and decisions or the commission's existing authority to  
18 investigate and penalize an electrical corporation's alleged  
19 fraudulent activities, or to disallow costs incurred as a result of  
20 gross incompetence, fraud, abuse, or similar grounds. Nothing in  
21 this section expands, modifies, or limits the State Energy  
22 Resources Conservation and Development Commission's  
23 existing authority and responsibilities as set forth in Sections  
24 25216, 25216.5, and 25323 of the Public Resources Code.

25 (i) An electrical corporation that serves less than 500,000  
26 electric retail customers within the state may file with the  
27 commission a request for exemption from this section, which the  
28 commission shall grant upon a showing of good cause.

29 (j) (1) Prior to its approval pursuant to Section 851 of any  
30 divestiture of generation assets owned by an electrical  
31 corporation on or after the date of enactment of the act adding  
32 this section, the commission shall determine the impact of the  
33 proposed divestiture on the electrical corporation's procurement  
34 rates and shall approve a divestiture only to the extent it finds,  
35 taking into account the effect of the divestiture on procurement  
36 rates, that the divestiture is in the public interest and will result in  
37 net ratepayer benefits.

38 (2) Any electrical corporation's procurement necessitated as a  
39 result of the divestiture of generation assets on or after the  
40 effective date of the act adding this subdivision shall be subject

1 to the mechanisms and procedures set forth in this section only if  
2 its actual cost is less than the recent historical cost of the divested  
3 generation assets.

4 (3) Notwithstanding paragraph (2), the commission may deem  
5 proposed procurement eligible to use the procedures in this  
6 section upon its approval of asset divestiture pursuant to Section  
7 851.

8 SEC. 9. Section 454.5 of the Public Utilities Code, as added  
9 by Section 2 of Chapter 835 of the Statutes of 2002, is repealed.

10 ~~454.5. (a) The commission shall specify the allocation of~~  
11 ~~electricity, including quantity, characteristics, and duration of~~  
12 ~~electricity delivery, that the Department of Water Resources shall~~  
13 ~~provide under its power purchase agreements to the customers of~~  
14 ~~each electrical corporation, which shall be reflected in the~~  
15 ~~electrical corporation's proposed procurement plan. Each~~  
16 ~~electrical corporation shall file a proposed procurement plan with~~  
17 ~~the commission not later than 60 days after the commission~~  
18 ~~specifies the allocation of electricity. The proposed procurement~~  
19 ~~plan shall specify the date that the electrical corporation intends~~  
20 ~~to resume procurement of electricity for its retail customers,~~  
21 ~~consistent with its obligation to serve. After the commission's~~  
22 ~~adoption of a procurement plan, the commission shall allow not~~  
23 ~~less than 90 days before the electrical corporation resumes~~  
24 ~~procurement pursuant to this section.~~

25 ~~(b) An electrical corporation's proposed procurement plan~~  
26 ~~shall include, but not be limited to, all of the following:~~

27 ~~(1) An assessment of the price risk associated with the~~  
28 ~~electrical corporation's portfolio, including any utility-retained~~  
29 ~~generation, existing power purchase and exchange contracts, and~~  
30 ~~proposed contracts or purchases under which an electrical~~  
31 ~~corporation will procure electricity, electricity demand~~  
32 ~~reductions, and electricity-related products and the remaining~~  
33 ~~open position to be served by spot market transactions.~~

34 ~~(2) A definition of each electricity product, electricity-related~~  
35 ~~product, and procurement related financial product, including~~  
36 ~~support and justification for the product type and amount to be~~  
37 ~~procured under the plan.~~

38 ~~(3) The duration of the plan.~~

39 ~~(4) The duration, timing, and range of quantities of each~~  
40 ~~product to be procured.~~

1 ~~(5) A competitive procurement process under which the~~  
2 ~~electrical corporation may request bids for procurement-related~~  
3 ~~services, including the format and criteria of that procurement~~  
4 ~~process.~~

5 ~~(6) An incentive mechanism, if any incentive mechanism is~~  
6 ~~proposed, including the type of transactions to be covered by that~~  
7 ~~mechanism, their respective procurement benchmarks, and other~~  
8 ~~parameters needed to determine the sharing of risks and benefits.~~

9 ~~(7) The upfront standards and criteria by which the~~  
10 ~~acceptability and eligibility for rate recovery of a proposed~~  
11 ~~procurement transaction will be known by the electrical~~  
12 ~~corporation prior to execution of the transaction. This shall~~  
13 ~~include an expedited approval process for the commission's~~  
14 ~~review of proposed contracts and subsequent approval or~~  
15 ~~rejection thereof. The electrical corporation shall propose~~  
16 ~~alternative procurement choices in the event a contract is~~  
17 ~~rejected.~~

18 ~~(8) Procedures for updating the procurement plan.~~

19 ~~(9) A showing that the procurement plan will achieve the~~  
20 ~~following:~~

21 ~~(A) The electrical corporation will, in order to fulfill its unmet~~  
22 ~~resource needs and in furtherance of Section 701.3, until a 20~~  
23 ~~percent renewable resources portfolio is achieved, procure~~  
24 ~~renewable energy resources with the goal of ensuring that at least~~  
25 ~~an additional 1 percent per year of the electricity sold by the~~  
26 ~~electrical corporation is generated from renewable energy~~  
27 ~~resources, provided sufficient funds are made available pursuant~~  
28 ~~to Section 399.6, to cover the above-market costs for new~~  
29 ~~renewable energy resources.~~

30 ~~(B) The electrical corporation will create or maintain a~~  
31 ~~diversified procurement portfolio consisting of both short-term~~  
32 ~~and long-term electricity and electricity-related and demand~~  
33 ~~reductions products.~~

34 ~~(10) The electrical corporation's risk management policy,~~  
35 ~~strategy, and practices, including specific measures of price~~  
36 ~~stability.~~

37 ~~(11) A plan to achieve appropriate increases in diversity of~~  
38 ~~ownership and diversity of fuel supply of nonutility electrical~~  
39 ~~generation.~~

~~(12) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.~~

~~(e) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:~~

~~(1) A competitive procurement process under which the electrical corporation may request bids for procurement-related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction process is open and adequately subscribed. Any purchases made in compliance with the commission-authorized process shall be recovered in the generation component of rates.~~

~~(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that limit the risk and reward of an electrical corporation.~~

~~(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a~~

1 ~~proposed contract pursuant to this criteria, the commission shall~~  
2 ~~designate alternative procurement choices obtained in the~~  
3 ~~procurement plan that will be recoverable for ratemaking~~  
4 ~~purposes.~~

5 ~~(d) A procurement plan approved by the commission shall~~  
6 ~~accomplish each of the following objectives:~~

7 ~~(1) Enable the electrical corporation to fulfill its obligation to~~  
8 ~~serve its customers at just and reasonable rates.~~

9 ~~(2) Eliminate the need for after-the-fact reasonableness~~  
10 ~~reviews of an electrical corporation's actions in compliance with~~  
11 ~~an approved procurement plan, including resulting electricity~~  
12 ~~procurement contracts, practices, and related expenses. However,~~  
13 ~~the commission may establish a regulatory process to verify and~~  
14 ~~assure that each contract was administered in accordance with the~~  
15 ~~terms of the contract, and contract disputes which may arise are~~  
16 ~~reasonably resolved.~~

17 ~~(3) Ensure timely recovery of prospective procurement costs~~  
18 ~~incurred pursuant to an approved procurement plan. The~~  
19 ~~commission shall establish rates based on forecasts of~~  
20 ~~procurement costs adopted by the commission, actual~~  
21 ~~procurement costs incurred, or combination thereof, as~~  
22 ~~determined by the commission. The commission shall establish~~  
23 ~~power procurement balancing accounts to track the differences~~  
24 ~~between recorded revenues and costs incurred pursuant to an~~  
25 ~~approved procurement plan. The commission shall review the~~  
26 ~~power procurement balancing accounts, not less than~~  
27 ~~semiannually, and shall adjust rates or order refunds, as~~  
28 ~~necessary, to promptly amortize a balancing account, according~~  
29 ~~to a schedule determined by the commission. Until January 1,~~  
30 ~~2006, the commission shall ensure that any overcollection or~~  
31 ~~undercollection in the power procurement balancing account~~  
32 ~~does not exceed 5 percent of the electrical corporation's actual~~  
33 ~~recorded generation revenues for the prior calendar year~~  
34 ~~excluding revenues collected for the Department of Water~~  
35 ~~Resources. The commission shall determine the schedule for~~  
36 ~~amortizing the overcollection or undercollection in the balancing~~  
37 ~~account to ensure that the 5 percent threshold is not exceeded.~~  
38 ~~After January 1, 2006, this adjustment shall occur when deemed~~  
39 ~~appropriate by the commission consistent with the objectives of~~  
40 ~~this section.~~

~~(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.~~

~~(5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.~~

~~(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.~~

~~(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.~~

~~(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.~~

~~(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.~~

~~(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.~~



~~(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.~~

~~(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.~~

~~(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.~~

SEC. 10. Section 9609 is added to the Public Utilities Code, to read:

9609. When a local publicly owned electric utility expands service into a geographical service area of an electrical corporation, any noncore customer, aggregated noncore customer, grandfathered direct access customer, or green-choice customer within that service area receiving electricity through a direct transaction pursuant to Article 17 (commencing with Section 400), shall have the right to engage in direct transactions.

SEC. 11. Section 80110 of the Water Code is amended to read:

80110. The department shall retain title to all ~~power~~ *electricity* sold by it to the retail ~~end-use~~ *end-use* customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate. ~~Such~~ *The* revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department

1 pursuant to the Governor's Emergency Proclamation dated  
2 January 17, 2001. For purposes of this division and except as  
3 otherwise provided in this section, the Public-Utility Utilities  
4 Commission's authority as set forth in Section 451 of the Public  
5 Utilities Code shall apply, except any just and reasonable review  
6 under Section 451 shall be conducted and determined by the  
7 department. The commission may enter into an agreement with  
8 the department with respect to charges under Section 451 for  
9 purposes of this division, and that agreement shall have the force  
10 and effect of a financing order adopted in accordance with  
11 Article 5.5 (commencing with Section 840) of Chapter 4 of Part  
12 1 of Division 1 of the Public Utilities Code, as determined by the  
13 commission. ~~In no case shall the commission~~ *The commission*  
14 ~~shall not increase the electricity charges in effect on the date that~~  
15 ~~the act that adds this section becomes effective~~ *February 1,*  
16 *2001, for residential customers for existing baseline quantities or*  
17 *usage by those customers of up to 130 percent of existing*  
18 *baseline quantities, until such time as the department has*  
19 *recovered the costs of power electricity it has procured for the*  
20 *electrical corporation's retail-end-use end-use customers as*  
21 *provided in this division. After the passage of such a period of*  
22 *time after the effective date of this section February 1, 2001, as*  
23 *shall be determined by the commission, the right of retail-end-use*  
24 *end-use customers pursuant to Article 6 (commencing with*  
25 *Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public*  
26 *Utilities Code to acquire service from other providers shall be*  
27 *suspended until the department no longer supplies power*  
28 *hereunder. On and after March 15, 2007, the acquisition of*  
29 *electricity from electric service providers shall be in accordance*  
30 *with Article 17 (commencing with Section 400) of Chapter 2.3 of*  
31 *Part 1 of Division 1 of the Public Utilities Code. The department*  
32 *shall have the same rights with respect to the payment by retail*  
33 *end-use end-use customers for power electricity sold by the*  
34 *department as do providers of power electricity to such those*  
35 *customers.*

36 SEC. 12. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the

1 penalty for a crime or infraction, within the meaning of Section  
2 17556 of the Government Code, or changes the definition of a  
3 crime within the meaning of Section 6 of Article XIII B of the  
4 California Constitution.

O